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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,871	03/18/2004	Philip Russel James Smith	66347-104	5458
68804	7590	09/21/2007		
JOHN P. DE LUCA 17420 RYEFIELD CT. DICKERSON, MD 20842			EXAMINER RAMDHANIE, BOBBY	
			ART UNIT 1743	PAPER NUMBER
			MAIL DATE 09/21/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/802,871

Applicant(s)

SMITH ET AL.

Examiner

Bobby Ramdhanie, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's arguments filed 07/30/2007 have been fully considered but they are not persuasive. Applicant argues that the snap-fit is not to secure the tip to the tube, but to engage a corresponding part in a multi-well plate into which the tip is engaged. Examiner takes the position that Day teaches the tube of Claim 1. Claim 1 as amended, does not distinguish it from Day. Day teaches that the tubes are "beveled" to fit one way into the well plate. Examiner takes the position that this defines that the tube has a "snap-fit connector portion at the other end for the engagement with the bottom of a bore in a multi-well plate." As a result, Day still teaches the tube of Claim 1, which comprises the snap-fit connector portion at the other end for engagement with the bottom of a bore in a multi-well plate ([0003] & [0013-0015]). In addition, Examiner takes the position that since the base is fully supported ([0003]) and the end-cap is on the base of the tube, the end-cap is therefore fully supported or suited for engagement with the bottom of a bore in a multi-well plate.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1,2, & 6-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Day (US2002/0098126 A1). Regarding Claim 1, Day teaches a tube for storing micro-

liter volumes ([0003], a body portion of substantially square cross section ([0089]), a shoulder portion at said one end of the body portion and providing the open end of the tube, the cross section of the shoulder portion being greater than that of the body portion (Figures 13 and 14) and a formation providing a snap fit connector portion at the other end ([0075]). Examiner takes the position that Day teaches the tube of Claim 1, comprises the snap-fit connector portion at the other end for engagement with the bottom of a bore in a multi-well plate ([0003] & [0013-0015]). Examiner takes the position that since the base is fully supported and since the end-cap is on the base of the tube, the end-cap is therefore fully supported or suited for engagement with the bottom of a bore in a multi-well plate.

3. For Claim 2, Day teaches a tube according to Claim 1, further comprising a closure member disposed to close the open end ([0003]).

4. For Claim 6, Day teaches a tube according to claim 1, wherein the body and shoulder portions are formed separately from the snap fit connector portion ([0013] and [0026-0028]).

5. For Claim 7, Day teaches a tube according to claim 1, wherein the snap fit connector has a dot code on it ([0026-0028, and 0104]).

6. For Claim 8, Day teaches a tube according to claim 1 the body and shoulder portions are formed from a translucent or transparent material ([0074] and [0103]).

7. For Claim 9, Day teaches a tube according to claim 8, further comprising a spigot at the interface between the body portion and the snap fit connector portion ([0096]).

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8. For Claim 10, Day teaches a tube according to claim 1 wherein the body portion and snap fit connector are co-moulded ([0076] and Claim 22).

9. For Claim 11, Day teaches a tube for storing fluid, the tube being open at one end and comprising a body portion of substantially square cross section; a shoulder portion at said one end of the body portion and providing the open end of the tube, the cross section of the shoulder portion being greater than that of the body portion; and a flared snap fit connector portion at the closed end of the tube; said flared snap fit connector portion having an identification code provided thereon ([0013], [0089], Figures 13 and 14, and [0104]). Examiner takes the position that Day teaches the tube of Claim 11, comprises the snap-fit connector portion at the other end, for engagement with the bottom of a bore in a multi-well plate ([0003] & [0013-0015]). Examiner takes the position that since the base is fully supported and the end-cap is on the base of the tube, the end-cap is therefore fully supported or suited for engagement with the bottom of a bore in a multi-well plate.

10. For Claim 12, Day teaches a tube according to claim 11 wherein the connector and body portions are formed separately from different materials ([0074 and [0094]).

### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Day (US 2002/0098126 A1) in view of Helger et al (US 3759374) and Stanchfield et al (US 6479020B1). Day teaches a tube according to claim 1. Day does not teach wherein the closure member is a foil cap, self sealing member nor a split septum. Helger et al teaches the closure member comprising a foil cap (Column 2 lines 30-50) and Stanchfield et al teaches the closure member comprising a self sealing member or split septum (Column 11 lines 25-40). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Day in view of Helger et al and Stanchfield et al because according to Helger et al, using a foil cap can be advantageous when the sample of interest needs to be freeze dried and must be sealed for preservation reasons, sample containers sealed with foil caps provide a very good seal, can withstand an internal pressure of 2 atm, and the foil can be removed or punctured to remove the sample at a later time (Column 4 lines 50-60 and Column 5 lines 0-5). According to Stanchfield et al, the rubber materials are chemical resistant

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and are well known for forming septa for sealing round bottom flasks and Erlenmeyer Flasks and other containers commonly used by researchers (Column 11 lines 29-40).

### ***Conclusion***

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bobby Ramdhanie, Ph.D. whose telephone number is 571-270-3240. The examiner can normally be reached on Mon-Fri 8-5 (Alt Fri off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on 571-272-1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BR

  
WALTER D. GRIFFIN  
SUPERVISORY PATENT EXAMINER